

TRANSFER OF DEVELOPMENT CREDITS

People have been moving to San Luis Obispo County (SLO) for the benefits offered by its natural and cultural landscape. Others, some of pioneer stock, have remained here for generations for the same reasons. We reside in a rural county continually faced with the dilemma of the agricultural/urban interface.

In the late 1980s, SLO County had the foresight to explore the “Rural Settlement Strategy.” In 1996, the county adopted a resolution whose primary goals were to retain existing agricultural lands and encourage development in urban areas. This program became known as the San Luis Obispo County Transfer of Development Credit Program (TDC).

ORIGIN

The Grand Jury recognizes the county’s efforts to retain agricultural land and protect the natural landscape. One of those efforts, TDC, has been the subject of increasing controversy. The Grand Jury initiated a study to explore the successes and/or failures of this program.

AUTHORITY

California Penal Code §925 states: “The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts.”

METHOD

The Grand Jury took the following steps in conducting this inquiry:

- Interviewed San Luis Obispo County Planning and Building Department staff,
- Interviewed community development staff from cities within San Luis Obispo County,
- Interviewed a ‘sender site’ owner,
- Interviewed concerned county citizens and groups,

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- Reviewed the history of the Transfer of Development Credit Program in San Luis Obispo County,
- Reviewed the 2000-01 San Luis Obispo County Grand Jury Report on the Transfer of Development Credit Program,
- Reviewed the current TDC program, and
- Attended recent Board of Supervisors meetings when TDCs were discussed.

BACKGROUND

Land use management and its impact on San Luis Obispo County development is a controversial issue in local government today. First-rate land use practices, supported by local governance and citizen backing, are necessary. Without this essential support, urban and suburban development spreads in a manner that negatively impacts the county's prime business – agriculture - as well as the population's quality of life.

In 1996 an effort was made to avoid continued loss of irreplaceable agricultural land to urban and suburban development. The county implemented a TDC program modeled after Transfer of Development Rights (TDR) programs, commonly employed throughout the United States, to protect agricultural land from urban sprawl and to concentrate development in public service-rich urban areas.

How TDC Works

Purpose — The TDC program was designed to:

- 1) locate development away from environmentally sensitive land and land with agricultural capability, to more suitable urban areas where services are readily available and
- 2) retire antiquated subdivisions, thereby reducing potential development on properties with no legal requirement to adhere to California state environmental regulations or county land use ordinances.

Mechanism — The TDC program is a market-driven voluntary land-use planning tool that transfers a landowner's right to develop from one potential development site (sender site) to another (receiver site). Rural and agricultural sites, which possess development potential, may

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sell or transfer development rights (credits) to suitable urban sites. Transfer of these credits reduces the development possible on the sender site and increases the development potential on the receiver site. Sender sites create the opportunity for increased density at receiver sites beyond the provisions of the General Plan.

A 7,200 acre ranch in North SLO County was the first to be piloted as a TDC sender site and the largest sender site as well. When the program was initiated, additional credits, known as bonus credits, were assigned. These were incentives given to the sender site to “jump start” the process. This complicated the controversial method for assigning credits.

Critics recommend a 1:1 transfer ratio—one lot created for one lot protected. This recommendation, however, is more difficult to adopt and accept. Others say there must be a significant incentive for landowners to become sender sites. The price a receiver site would pay a sender for a credit is negotiable and could fluctuate with land prices. However, since developers can locate projects within the urban reserve line or seek an amendment to the General Plan, there is little, if any, incentive to pay for development credits.

Incentives — There is the question of incentives for senders and receivers. The bonus credits granted to the largest sender site in the program may be many, but their value is dependent on their sale. The owners of the greatest number of TDCs for sale, and with the most to gain, state that the program is not working. In their opinion, the incentives are not sufficient for a developer to apply as a receiver site. TDC owners are aware that developers may achieve their goals through development within the urban reserve line or General Plan Amendments without the need for TDCs.

The SLO County Department of Planning and Building has been left with the responsibility of justifying the TDC program. The department reports three approved sender sites and continues to claim success in the preservation of 5463.95 acres of agricultural land in the outlying rural areas of the county. Over 5000 acres, however, are contained on one sender site. Potential sender sites are not stepping up. Why? No incentives.

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Conservation Easement — An integral requirement for establishing a sender site is the development of a conservation easement that forbids urban development and severely limits other forms of development on the site. When dealing with TDC issues, the term ‘conservation easement’ translates into restricting development and not necessarily protecting wildlife habitat, woodlands, watershed, etc. Since the sender site is typically agricultural in nature, the conservation easement protects (conserves) agricultural activities. Requirements for each conservation easement are negotiated on a case-by-case basis between the landowner and a land conservancy.

TDC Approaches — The county’s TDC program may be separated into two working approaches: 1) county-wide based and 2) community-based. The county-wide approach uniformly applies TDC requirements to all of the unincorporated land in the County. The community-based approach allows customized TDC adaptations to be tailored to the individual needs of each community.

Agency and Public Concerns — On March 10, 2005, the SLO County Department of Planning and Building conducted a study session on the TDC Program for the Planning Commission. Additional meetings were held and as a result, the Planning Commission drafted a letter dated May 12, 2005, outlining the Commission’s concerns.

This letter stated the TDC program is not meeting its land use objective to relocate development from environmentally sensitive land, land with agricultural capability or antiquated subdivisions to more suitable lands. It further stated the following goals were not accomplished:

- 1) retiring lots,
- 2) providing a financial incentive to owners of antiquated lots, and
- 3) protecting family farms, large eco-systems and urban green belts.

As a result, the Planning Commission recommended the countywide TDC program be discontinued except for community-based programs, established TDC sites and those that have been, or may be, established as part of a General Plan update.

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The SLO County Department of Planning and Building presented their response to the Planning Commission's issues as well as the annual report on the TDC Program to the Board of Supervisors on October 4, 2005 (Exhibit 1). The Board of Supervisors directed planning department staff to return on November 22, 2005, for further discussion of the program and for direction from the Board. During the period leading up to this date, the Templeton Area Advisory Group, the Nipomo Community Advisory Group, the Santa Margarita Area Advisory Council, and the Shandon Area Advisory Committee, wrote letters to the Board recommending that the TDC program be discontinued.

On November 22, 2005, the Board of Supervisors hosted a three-hour public hearing in which 23 people spoke against, while four supported it. The majority requested either a moratorium or elimination of the program. Supporters were in a position to gain financially. The consensus of the audience, the advisory groups, County Department of Agriculture and the Planning Commission was that the program was not working as intended.

Despite the arguments, recommendations and pleas presented to the Board of Supervisors, it voted to redesign the program. The Board agreed to form the *TDC Blue Ribbon Committee*, a broad-based community group, with the following membership:

- two members from Agriculture (possibly one from the Farm Bureau and one active agriculturalist),
- two members from environmental groups (ECOSLO, Sierra Club or similar organizations),
- two members from development (one representing a receiver site and one from a development firm in the county),
- one member from the Land Conservancy of San Luis Obispo County,
- three members from Boards and Commissions (one from the Ag Liaison Board and two from the Subdivision Review Board),
- two members from the general public,
- two members representing the Advisory Groups, and
- one member from a city planning department.

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All meetings would be open to the public as the members participate in discussions with county staff. The Board of Supervisors also agreed to eliminate agriculturally zoned lands as receivers of transfer credits.

The TDC program has been controversial from the outset and continues to be fueled by misunderstanding and public perception. It may be less intimidating to land use professionals and attorneys in the field; but to the public, it is daunting. The 2000-01 SLO County Grand Jury received a complaint regarding the implementation of the TDC Program and responded with *Findings and Recommendations*. (For responses from the SLO County Planning and Building Department, Board of Supervisors and County Administrative Officer, please see Bibliography #9.)

FINDINGS

1. The goal of the TDC program is to relocate potential development away from agricultural and environmentally sensitive land and to retire antiquated subdivisions. The relocation is to be close to urban areas where public services would be readily available.
2. The TDC program is essentially market-driven. However, developers can find suitable land for development within the urban reserve line or by requesting an amendment to the county's General Plan without having to purchase development credits from a sender site. Until most land within the urban reserve line is developed, there is little or no incentive to purchase credits.
3. SLO County land is essentially zoned into three categories: urban, agricultural or rural. Land may be zoned agricultural regardless of its actual agricultural value or the Soil Conservation Service land capability grouping. (See Bibliography #1, 4 & 5)
4. SLO County is covered with antiquated subdivisions that can be developed with less compliance to prevailing county environmental regulations and development standards. Most of the antiquated subdivisions are located on agricultural land.
5. A ranch in the northern portion of San Luis Obispo County was the pilot TDC sender site with over 5,000 acres preserved. Even though other properties qualified as sender sites, for all practical purposes this ranch remains the most significant sender site.

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6. In a May 27, 2004 memorandum to the county Principal Planner, the SLO County Agricultural Commissioner recommended that all land within the Agriculture Land Use category not be eligible as TDC receiver sites
7. Using input from citizens and area advisory groups, the SLO County Planning Commission developed a set of specific recommendations, the strongest of which was to discontinue use of the TDC program, except for the community based programs and TDC sites that have been, or may be, established as part of the General Plan update.
8. In response to the Planning Commission's recommendations, the SLO County Department of Planning and Building proposed:
 - County staff reevaluate the method used to determine the number of sender credits,
 - County staff reevaluate the allowed uses in the conservation easements and the requirements for conservation easement management,
 - the Board of Supervisors amend the current policy of allowing receiver sites in agricultural areas to disallow agricultural land being considered as a receiver site and,
 - County staff prepare amendments to the TDC program to encourage growth in urban areas where existing public services can effectively serve the additional density.
9. The Board of Supervisors agreed to form the *TDC Blue Ribbon Committee*, a broad-based committee, to review the TDC program.

RECOMMENDATIONS

1. The TDC program should continue, providing the recommendations in this report are implemented. (Finding 1)
2. The Board of Supervisors should develop an incentive program to attract both sender and receiver sites. (Finding 2)
3. Sender sites should not receive TDCs for land that has no agricultural value. (Findings 1 & 3)
4. Receiver sites should be located in proximity to available public services. (Findings 1 & 8)

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REQUIRED RESPONSES

- **The San Luis Obispo County Department of Planning and Building, Due 08/11/06 (All Findings and Recommendations)**
- **The San Luis Obispo County Board of Supervisors, Due 09/12/06 (All Findings and Recommendations)**

SUMMARY

San Luis Obispo County is a predominantly agricultural county. With San Francisco to the north and Los Angeles to the south of us, the pressure to create urban and suburban developments in our county is enormous and increasing. In an effort to avoid continued loss of irreplaceable agricultural land to urban and suburban development, the county implemented a Transfer of Development Credits program. Similar programs in other states have been successful in preserving agricultural land.

The TDC program as implemented in this county has been perceived by a variety of citizen groups as unsuccessful. These groups, along with the Planning Commission and the County Agriculture Department, have all recommended substantive changes in the program as it currently operates. The Grand Jury's research revealed that program has not had the success achieved elsewhere. We urge the County to modify the program to enable realization of the program's goals.

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